Roberta Hotel Group, Inc. d/b/a War Bonnet Inn and Hotel Employees and Restaurant Employees Union, Local 457, AFL–CIO. Case 19–CA– 23701

# February 15, 1995

# **DECISION AND ORDER**

# BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed in the above case on December 15, 1994, the General Counsel of the National Labor Relations Board issued a consolidated complaint on December 30, 1994, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 19–RC–12862.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and submitting affirmative defenses.

On January 23, 1995, the General Counsel filed a Motion for Summary Judgment in the instant case. On January 25, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On or about February 4, 1995, the Respondent filed a response, and on February 8, 1995, the General Counsel filed a reply thereto.

The Board has delegated its authority in this proceeding to a three-member panel.

# Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain with the Union, but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the Regional Director improperly overruled its objection to the election and failed to hold a hearing thereon.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

# FINDINGS OF FACT

# I. JURISDICTION

The Respondent is a Montana corporation with an office and place of business in Butte, Montana, where it is engaged in the business of operating a hotel and restaurant. During the 12-month period preceding issuance of the complaint, which period is representative of all material times, the Respondent, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$500,000, and purchased and caused to be transferred and delivered to its facilities within the State of Montana goods and materials valued in excess of \$50,000 directly from sources outside the State, or from suppliers within the State which in turn obtained such goods and materials directly from sources outside the State.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

# A. The Certification

Following the election held June 15, 1994, the Union was certified on November 10, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

All maids employed by Respondent in its Butte, Montana operation. Excluded are all office clerical employees, culinary employees, lounge employees, front desk employees, maintenance employees, laundry workers, and all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. Refusal to Bargain

At all material times since the Union's election and certification, the Respondent has refused to bargain with the Union. We find that this refusal constitutes an

<sup>&</sup>lt;sup>1</sup>The consolidated complaint also alleged that the Respondent violated Sec. 8(a)(5) and (1) by making certain unilateral changes. These allegations were contained in a charge filed on December 5, 1994, in Case 19–CA–23679, which was consolidated with the instant case. However, on January 23, 1995, the General Counsel filed a motion to sever Case 19–CA–23679 from the instant case, which the Board granted in its January 25, 1995 order transferring the instant case to the Board and Notice to Show Cause. Having duly considered the Respondent's objections to severance in its response to the Notice to Show Cause, we hereby reaffirm the decision to sever and deny the Respondent's motion to reconsolidate the cases. See, e.g., *Pony Express Courier Corp.*, 310 NLRB 354 fn. 1 (1993).

unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

# CONCLUSION OF LAW

By refusing at all material times to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

# REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

# **ORDER**

The National Labor Relations Board orders that the Respondent, Roberta Hotel Group, Inc. d/b/a War Bonnet Inn, Butte, Montana, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with Hotel Employees and Restaurant Employees Union, Local 457, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All maids employed by Respondent in its Butte, Montana operation. Excluded are all office clerical employees, culinary employees, lounge employees, front desk employees, maintenance em-

- ployees, laundry workers, and all other employees, guards and supervisors as defined in the Act.
- (b) Post at its facility in Butte, Montana, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

# **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hotel Employees and Restaurant Employees Union, Local 457, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All maids employed by us in our Butte, Montana operation. Excluded are all office clerical employees, culinary employees, lounge employees, front desk employees, maintenance employees, laundry workers, and all other employees, guards and supervisors as defined in the Act.

ROBERTA HOTEL GROUP, INC. D/B/A WAR BONNET INN

<sup>&</sup>lt;sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."